

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No. 885 of 1998
Date of decision: 11th December, 2008

Zile Singh (dead, through LRs)

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE KANWALJIT SINGH AHLUWALIA

Present: Ms. Munisha Gandhi, Advocate for the petitioner.

Mr. Jayender Singh Chandail, Addl. AG Haryana
for respondent No1.

Mr. H.S. Gill, Senior Advocate with
Mr. Ramesh Dhiman, Advocate for respondents No.2 to 4.

KANWALJIT SINGH AHLUWALIA, J. (ORAL)

Present writ petition was filed by Zile Singh on 2nd November, 1987. During the pendency of proceedings, he died on 16th March, 1996 and is now being represented by his legal representatives.

Present petition has been filed seeking a writ in the nature of certiorari for quashing of Annexure P-10 and P-12 passed by respondent No.2 and 3. Vide Annexure P-10, an order was passed by the Managing Director, Haryana State Cooperative Supply & Marketing Federation Limited, that petitioner has embezzled 55 bags of wheat amounting to Rs.7425/- out of wheat stocks lying at Hodal Mandi and he failed to lift 29 bags of wheat of Hassanpur Centre lying with M/s Jai Kishan Trading Co., Hassanpur and had thus caused loss of Rs.3915/-. The Managing Director held that he has no reason as to why punishment proposed in the show cause notice should not be made final. In the show cause notice given to the petitioner, dismissal from the service was proposed. Vide Annexure

P-12, an appeal preferred by the petitioner was dismissed by the Administrative Committee of the respondent Haryana State Cooperative Supply & Marketing Federation Limited (hereinafter referred to as, 'HAFED').

Briefly stated, case of the petitioner is that he joined HAFED as a Clerk on 1st November, 1960. He was promoted as Assistant in the year 1969. Due to good service record, he was promoted to the post of Manager Grade-B in the year 1976. It has been averred that during the entire service record, no adverse remark was reported against the petitioner. In May 1980, petitioner was transferred to Hassanpur Procurement Centre as Manager, In-charge of Wheat Procurement Centre, Hassanpur. In July, 1980 he was transferred from Hassanpur Procurement Centre to Hodel Procurement Centre. On 20th November, 1980, a chargesheet was served upon the petitioner, in which two charges were set out. The chargesheet has been attached as Annexure P-1, and the same reads as under:

"1. That he has sold 55 bags of wheat valuing Rs.7425/- out of Hafed wheat stock of 131 bags lying in the Hodal Mandi. This stock was required to be lifted by him and stored in the Hafed godown. Instead of doing this lawful duty he sold 55 bags out of this stock and embezzled its sale proceeds for his personal ends.

Similarly, Shri Zile Singh has failed to arrange the lying of 29 bags of wheat of Hafed from Hassanpur Centre lying with M/s Jai Kishan Trading Co. Hassanpur. This stock is now not available with the said firm which implies a direct loss to Hafed to the extent of Rs.3915/-. As such he is responsible for causing this loss to Hafed alongwith Shri S.S. Nagpal, Accountant-cum-Store Keeper."

Reply was filed by the petitioner, in which he stated that when he joined at Hodel, 55 bags were pending with M/s Rawat Shop Hodal and

this fact can be verified from the record. It was further stated Rail Head Agency (RHA) of the firm retained Rs.400/- and therefore, there was a conflict between the RHA and the firm. Subsequently, District Manager had resolved the dispute. It was decided that 44 bags would be given by the Mandi Firm and balance would be recovered from the Storekeeper S.S. Nagpal. Therefore, it was stated that petitioner had nothing to do with the embezzlement. Regarding second charge, it was stated that no bags of HAFED are lying at Hassanpur Mandi. The Inquiry Officer found the submissions made by the petitioner before the Inquiry Officer, to be unsatisfactory and held him guilty on both counts. Therefore, the show cause notice (Annexure P-4) was served, as to why he be not dismissed from service. Reply to the show cause notice was filed. The same has been annexed as Annexure P-5. Reply was also rejected and vide Annexure P-10, services of the petitioner were dismissed.

Aggrieved against the same, petitioner had filed an appeal (Annexure P-11) and as stated earlier, vide Annexure P-12, appeal was dismissed. Dismissal order, in the present case, was passed on 26th April, 1982 and the appeal was dismissed on 6th March, 1987. Simultaneously, the employer respondent HAFED had initiated recovery proceedings against the petitioner for an amount of Rs.22,220/-, for embezzlement of 55 bags of wheat, which was lying at Hodal Mandi and 29 bags of wheat of Hassanpur Centre, which were lying with M/s Jai Kishan Trading Co., Hassanpur. In the recovery proceedings so initiated by the employer, Assistant Registrar, Cooperative Societies, Palwal, District Faridabad, vide a well reasoned order (Annexure P-14), held as under:

“Hafed has only produced copy of P.V. report dated 30.6.80. Stock register and no other concrete evidence was produced. The evidence produced by Shri Zile Singh, Ex. Manager, R.H.A. Hodel which were Ann. 1 to 5 which were

attached in this file at page 29 to 40 which are concrete evidence. And Zile Singh has given in writing that payment of the Transporter be made only after deducting the price of 40 bags. Shri Zile Singh has given the evidence of 30 bags which were left with the Transporter. But according to stock position, statement 20.5.81, against him 38-10 bags were remained. This statement was prepared by the District Manager, Hafed. Therefore, P.V. has no value. About 10 bags Shri Zile Singh has written in his letter that in one truck which was loaded in excess of which payment was taken after unloading the same by the Truck driver of the Transporter with some shopkeeper at Delhi and Shri Zile Singh has written in his statement that Transporter has deposited the price of 8 bags in Hafed R.H.A. Hodel. This statement was also heard and read by Shri Deepak Kumar, District Accountant, But he had not raised any objection to it. Even then if payment of 8 bags were not taken from the transporter then Shri Zile Singh, Ex. Manager, R.H.A. Hodel may be held liable. The price of the rest of the 30 bags must be deducted from the payment of the transporter at the time of payment. Payment of this was made by the then D.M. Hafed, Faridabad and at the time of payment to the Transporter, that amount was not deducted. Therefore, for this amount the D.M. Hafed Faridabad of that time is responsible. Therefore, case be prepared against him. Today dated 4.2.86, the order is announced in the open Court in the presence of Shri Nav Rattan Singh, District Manager, Hafed, Faridabad, Shri Deepak Kumar, District Accountant, Hafed, Faridabad and Shri Rajbir Singh, D.O. (M.S.) Hafed Faridabad (Petitioner) and Shri Zile Singh, Ex. Manager, R.H.A. Hodel (Defendant)."

Ms. Munisha Gandhi appearing for the petitioner has raised two fold submissions before this Court. Firstly, it has been stated that in the recovery proceedings, the plea raised by the petitioner has been accepted. Same plea was raised by the petitioner before the Inquiry Officer and therefore, in parallel proceedings, two contrary findings have been arrived at. It has been further submitted that order passed by the Assistant Registrar, Cooperative Societies, who is an independent quasi-judicial authority, has absolved the petitioner of the charges and the order passed by Assistant Registrar, Cooperative Societies, Palwal should be taken into consideration by the Department, as the petitioner has proved his innocence. It has been further stated that appeal of the petitioner has been dismissed vide Annexure P-12 and the order of the appellate authority does not reflect any application of mind. It only states that after discussion, the Committee felt that there was no force in the appeal of Zile Singh, and rejected his appeal. It has been further stated that the coram of order (Annexure P-12) will show that the Managing Director, HAFED was present. It has been stated that the impugned order was passed by the Managing Director, HAFED, therefore, he could not participate in the Administrative Committee, as he could not be a Judge of his own cause. Therefore, order (Annexure P-12) is vitiated.

Mr. H.S. Gill, Senior Advocate assisted by Mr. Ramesh Dhiman, states that the Managing Director, HAFED, present was not the same person.

I am of the view that this contention cannot be accepted. Therefore, the order of the appellate authority is set aside. The order was passed by the Managing Director in his official capacity and the Managing Director is bound to defend the order before the Administrative Committee, therefore, the order (Annexure P-12) is liable to be set aside. Taking into

consideration the fact that during pendency of the appeal, order Annexure P-14 has been passed in favour of the petitioner, legal representatives of the petitioner are permitted to file fresh grounds of appeal and may also place on record Annexure P-16 and P-17 before the Appellate Authority, which, on consideration of the same, will pass a speaking order. The appeal shall be decided within six months after the receipt of certified copy of this order.

With these observations, present writ petition is disposed off.

[KANWALJIT SINGH AHLUWALIA]
JUDGE

December 11, 2008
rps